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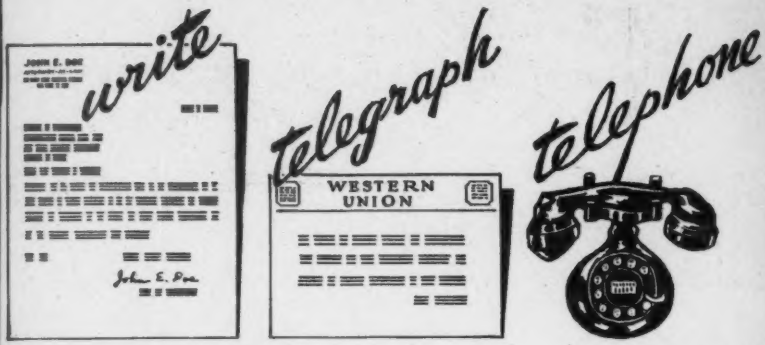

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Recent Decisions

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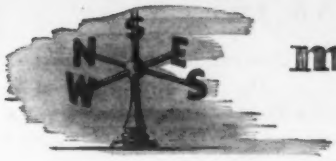


municipal tax trends

MUNICIPALITIES have, during the past few years, in searching for new sources of revenue, entered a number of fields not previously occupied by them. The retail sales tax has found favor with the greatest number of cities which have ventured into these new fields, which also include those of use taxes, income or earnings taxes, gross receipts and gross sales taxes, mercantile license taxes and amusement taxes.

Although the group of municipalities which have levied such taxes is still relatively small, compared with those potentially empowered to take such action, their number is being constantly augmented, as urgent need for increased revenue impels more and more such jurisdictions to probe for additional sources of revenue.

The new levies have not been limited to any one section of the country, as will be apparent from the fact that cities which have imposed such taxes are to be found in Alabama, California, Colorado, Illinois, Kentucky, Louisiana, Missouri, New Jersey, Ohio, Pennsylvania, Utah and West Virginia.

Retail Sales Taxes

Cities which have levied retail sales taxes are situated in Alabama, California, Colorado, Louisiana and New York.

California is the state in which the trend toward the adoption of retail sales taxes locally has been most marked. There, approximately one hundred municipalities have levied such a tax. These include many of the principal cities of the state, although Sacramento, the capital, is not among them. The rate of tax is ½ of 1% in all except seventeen, and in these the rate is 1%.

While, as in the case of the initial imposition of many of the state retail sales taxes, a number of these local California retail sales taxes were first imposed for definite periods, they are now, in practically all instances, imposed without a limitation as to time. Generally, the California city retail sales taxes are levied in the same manner as the state sales tax. In several instances, notably in Los Angeles, Oakland and San Diego, there has been an incorporation by reference of pertinent sections of the State sales tax law as part of the local sales tax ordinance.

In *Colorado,* the city of Denver has imposed a 1% retail sales tax which is scheduled to remain in effect during the calendar year 1948, the requirements being in many respects similar to the State 2% retail sales tax. The city of New Orleans, *Louisiana,* imposes a sales tax comparable to the State sales tax, these taxes being collected simultaneously. Jasper and Florence, *Alabama,* are also to be included among those cities imposing a municipal retail sales tax.

Local Sales Taxes in New York

New York is the only state in which cities exact retail sales taxes in the absence of the levy of a like tax by the State, although at one time such a State

tax was imposed. New York City began levying its retail sales tax toward the close of 1934. It has served as a model for other municipal retail sales taxes, this city being the first municipality to venture into this field. As a natural result, there have been rules developed in connection with this city's tax which have, to a considerable extent, been adopted by the other cities mentioned in their enforcement of their retail sales taxes—particularly, rulings growing out of decisions by the Supreme Court of the United States involving the application of the New York City sales tax to interstate commerce transactions.

Syracuse is a second city in the State of New York which levies a sales tax. There, a 2% tax has been levied since March 1, 1948.

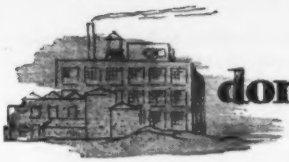
Erie County, New York, in which Buffalo is situated, has exacted a 1% county-wide retail sales tax since July 1, 1947, upon the receipts from retail sales of tangible personal property in that county, the requirements being similar in many respects to those of New York City. A comparable 1% retail sales tax is in effect in Tuscaloosa County, Alabama.

Use Taxes

Not all cities which impose retail sales taxes have undertaken to levy a complementary use or compensating tax; in fact, the trend may be said to be contrary to a general levying of use taxes simultaneously with the enactment of ordinances imposing retail sales taxes. Cities exacting use taxes concurrently with sales taxes are found to include the California cities of Glendale, Los Angeles, Oakland, Richmond, San Diego and San Francisco, the New York cities of Syracuse and New York City. New Orleans, Louisiana, Erie County, New York, and Tuscaloosa County, Alabama, likewise levy use taxes.

Wisconsin Sales Tax Referendum

Senate Joint Resolution provides that there shall be submitted to the voters at the general election to be held November 2, 1948, the following question: "Shall the legislature enact a 3% retail sales tax to raise a sum not to exceed $200,000,000 to be used to finance a bonus for veterans of World War II?"



domestic corporations

ILLINOIS

Amendment intended to bring about elimination of several years' accumulation of undeclared dividends on preferred stock, ruled to have no effect upon preferred shares of an objecting stockholder.

In the Circuit Court of Cook County, plaintiff corporation sought a declaratory judgment to establish the validity of an amendment to its charter, cancelling accumulated unpaid preferred stock dividends. A decree was entered granting the declaratory relief and ordering plaintiff to pay the defendant, under his counterclaim, dividends which had been declared under the amendment. Defendant then appealed.

The Appellate Court of Illinois, First District, Third Division, reversed the decree of the lower court. It observed that the question was "whether plaintiff's preferred could be altered and changed so as to wipe out several years' accumulation of 'undeclared dividends.'" After a review of pertinent decisions in Illinois and other states, the court said: "We conclude that the amendment in question is void in so far as it sought to cancel the accumulated unpaid preferred dividends and had no effect upon the preferred shares of defendant, an objecting shareholder."

Defendant had contended not only that plaintiff had no right to cancel the accrued unpaid dividends on his preferred stock, and that it had no right to pay dividends on the common without first paying the accrued preferred dividends, but he also claimed dividends paid under the amendment on common stock which he owned. The court regarded these claims as inconsistent and remarked that justice required that plaintiff, as a counter-defendant to a counterclaim of defendant for such dividends, be given an opportunity to assert grounds of defense to this counterclaim which had not been asserted in the court below.

Western Foundry Co. v. Wicker, 80 N. E. 2d 548. Kinne and Scovel (Harry C. Kinne, Sr., and Harry C. Kinne, Jr., of counsel), of Chicago, for appellant. Poppenhausen, Johnston, Thompson & Raymond (James A. Sprowl and Charles J. O'Laughlin, of counsel), of Chicago, for appellee. *(Leave to appeal granted by the Illinois Supreme Court.)*

MICHIGAN

Extension of lease of hotel by board of directors ruled not to give rise to right of stockholder to demand appraisal of his stock.

Section 57, Act No. 327, Public Acts 1931, permits Michigan corporations, among other things, to lease all or substantially all of their property and assets,

when authorized by the affirmative vote of the holders of a majority of the shares issued and outstanding given at a stockholders' meeting duly called for that purpose. Section 44 of that Act provides that upon such authorization, a stockholder who voted against such action may, within a restricted period thereafter, object in writing and demand payment of the fair cash value of his shares.

Defendant corporation had adopted the leasing of a hotel it owned to others as one of its principal purposes from the beginning of its existence. After the board of directors had entered into an extension of an existing lease, without any action on the part of the stockholders, plaintiff sought to have defendant purchase his stock under Sec. 44, which the corporation refused to do. Taking the position that defendant had, by the extension of the lease, divested itself of substantially all its assets excepting cash in bank and its franchise to do business, its other assets being only a small piece of real property, plaintiff sought, in this action, an order appointing appraisers to appraise the value of his stock and for judgment against the company for its appraised value.

A decree dismissing plaintiff's petition was entered by the Supreme Court of Michigan, which reversed a judgment in plaintiff's favor. The court regarded the leasing as a matter to be considered and acted upon by the board of directors in the ordinary discharge of its duties and not a matter to be submitted to the shareholders. It indicated that the relief provided in Sec. 44 was "available only to a shareholder who in a shareholders' meeting voted against the action complained of and in this case no such action by shareholders occurred."

Pollack v. Adwood Corporation, 32 N. W. 2d 62. Lewis & Watkins of Detroit, for appellant. Benjamin Alpert (Harry S. Toy, of counsel), for appellee.

NEW YORK

Director of corporation held by Appellate Division to have an absolute right to access to the books and records of his corporation.

Petitioner had been treasurer and a director of appellant corporation since its organization in 1946. Since October 1, 1947, he had been denied access to the books and records of the company. Petitioner's co-directors, the president and vice-president, upon this motion for an order directing them to permit inspection, urged that the purpose of the application was to hamper and embarrass the appellant corporation; that the corporation was at the time suing petitioner for damages in the sum of $25,000 for breach of his fiduciary duty as an officer and director, upon the ground that he had attempted to wreck the corporation for the benefit of a competitive company controlled by him and that he had been given information of the corporate activities by the corporate accountant appointed by him.

In affirming an order granting petitioner's application, the New York Supreme Court, Appellate Division, First Department, said: "The petitioner, as a director of the corporation, has an absolute right to the inspection demanded. All that he need show is that he is a director of the company; that he had demanded permission to examine and

that his demand has been refused. It is the duty of the petitioner to keep himself informed of the business of the corporation. To perform this duty intelligently he has the unqualified right to inspect its books and records." "It is of no consequence that the petitioner may be hostile to the corporation. His object in seeking the examination is immaterial. His right of inspection is not dependent upon his being able to satisfy other officers of the corporation that his motives are adequate." Petitioner was ruled "entitled to an order directing respondents-appellants to permit a complete inspection of the books of the corporation."

*Davis v. Keilsohn Offset Co., Inc., et al.,** 79 N. Y. S. 2d 540. Melvin A. Albert of New York City, for appellants. Simon S. Nessim of New York City, for petitioner-respondent.

* The full text of this opinion is printed in the **New York Corporation Law Reporter,** page 9202.

Section 61-b, General Corporation Law, requiring certain plaintiffs in a stockholders' derivative suit to give security for reasonable litigation expenses ruled valid by Court of Appeals.

This action, brought by a stockholder of the corporate defendant to recover in its behalf damages alleged to have been caused by acts of waste and mismanagement committed by the individual defendants as its officers and directors, was dismissed by reason of plaintiff's failure to give security, on the corporate defendant's motion as directed by the trial court, in pursuance to Section 61-b, General Corporation Law, for the reasonable expenses which might be incurred by that defendant. Plaintiff appealed directly to the Court of Appeals of New York by attacking the constitutionality of the section mentioned under Civil Practice Act, Sec. 588, subd. 4.

The court, alluding to Section 61-b and also to Sections 64 to 68 of Article 6-A of the General Corporation Law, remarked: "Taken together, the cited sections mean this: In a stockholders' derivative action, the plaintiffs—unless they represent at least 5% of the corporation's shares or an aggregate of its shares having a value in excess of $50,000—must give security for the reasonable litigation expenses, including attorneys' fees, of all parties joined as defendants in the action. This plaintiff represents less than 5% of the outstanding stock of the corporate defendant and less than $50,000 worth of its shares and thus the present case is within the scope of the statutory provisions in question."

It was noted that the only issue before the court open to review was whether Section 61-b was unconstitutional "because it requires a plaintiff in a case like this to furnish security in any amount whatever for the litigation expenses mentioned in the statute."

Tracing the reasons for the adoption of the questioned legislation, the court concluded: "On this record, then, Section 61-b cannot be held to be so palpably arbitrary or unduly discriminatory as to be obnoxious either to the due process clause or to the guaranty of the equal protection of the laws." The judgment was, therefore, affirmed.

*Lapchak v. Baker, et al.,** 298 N. Y. 89, 80 N. E. 2d 751. Commerce Clearing House Court Decisions Requisition No. 396384.

* The full text of this opinion is printed in the **New York Corporation Law Reporter,** page 9243.

foreign corporations

CALIFORNIA

Withdrawn company ruled not exempt from service of process merely by reason of having acted in state under a "general agency agreement" with an agency of the Federal Government.

Petitioner, a New York corporation, was sued in a tort action. Having formally withdrawn from California, service was made upon the Secretary of State pursuant to Corporations Code, section 6504. The petitioner appeared specially on a motion to quash and its motion was denied. It then sought a writ of prohibition in the California District Court of Appeals, First District, Division Two, on the grounds that it was not engaged in any intrastate business in California and that its sole business in California was as an agent of the United States government.

This corporation had entered California solely for the performance of a "general agency agreement" with the War Shipping Administration of the United States, under which it had charge of the maintenance and operation of a fleet of tugboats belonging to the United States which went to foreign ports. The injury sued upon occurred on a tugboat which had been withdrawn from service and was docked in San Francisco Bay preparatory to being decommissioned.

The court considered the question whether the petitioner company was constitutionally exempt from state regulation, including the requirement that upon withdrawing from the state it remained subject to substituted service, by reason of the fact that it entered the state and transacted business there solely on behalf of the United States of America. Denying the petition for the writ of prohibition, the court remarked: "It seems clear from the decisions that a foreign corporation entering a state to perform services for the United States of America under a contract with it is not immune from reasonable state regulation. While the contract here is called a 'general agency agreement' its terms are not pleaded and nowhere appear in the record. We must assume if necessary in the absence of proof to the contrary that the petitioner was in fact an independent contractor rather than a true agent in the strict legal sense."

Moran Towing & Transportation Co. v. Superior Court of San Francisco, California District Court of Appeals, First District, Division Two, June 16, 1948. Dorr, Cooper & Hays; Dorr, Stevenson & Cooper, for petitioner. Fitz-Gerald Ames, Sr., and Hugh B. Miller, for respondent. Commerce Clearing House Court Decisions Requisition No. 394973.

MISSISSIPPI

Unlicensed real estate company, making sales in state, held doing business so as to be required to be qualified, and, while not able to sue in state courts, held to have right to sue in the federal courts.

A Tennessee real estate brokerage corporation, not licensed in Mississippi filed suit in the Federal District Court for the Northern District of Mississippi to recover from a resident of Mississippi a brokerage commission alleged to be due on the sale of certain of the latter's real estate in Mississippi. The District Court, upon the admission of the corporation that it had carried on a number of transactions in the state over a period of years, found that it was doing business in Mississippi and ruled that the contract was void, entering judgment dismissing the suit with prejudice.

Upon appeal, the United States Circuit Court of Appeals, Fifth Circuit, was also of the opinion that the company was doing business within the meaning of the Mississippi statutes. It concluded, however, that the contract sued upon was not void in the sense of being "absolutely null," but was void in the sense that no relief could be granted to a non-complying foreign corporation under the statutes.

"But," said the court, "the prohibition in the State law closing the doors of the State courts extends no further than the State courts. The State of Mississippi is without authority to limit or extend the jurisdiction of the federal courts. If diversity of citizenship exists, the fact that a foreign corporation may not sue in the State courts because it has not complied with the conditions of doing business within the State does not shut the doors of the federal court sitting in that State." The court then cited a line of cases beginning with *David Lupton's Sons Co. v. Automobile Club of America,* 225 U. S. 489, and held that the Tennessee corporation had the right to sue on its contract in the Federal District Court sitting in Mississippi, reversing the judgment of the District Court.

Interstate Realty Co. v. Woods, 168 F. 2d 701.

(*Note:* The *David Lupton's Sons Co.* case was characterized by the Supreme Court of the United States in 1947, in *Angel v. Bullington,* 67 S. Ct. 657, as one of a line of cases which are "obsolete insofar as they are based on a view of diversity jurisdiction." See discussion on "Unlicensed Foreign Corporations —Limitations Upon Use of Federal Courts," The Corporation Journal, April, 1947, page 303.)

NEW JERSEY

Service of process set aside where made upon president of unlicensed foreign corporation who was enticed into state for the purpose of such service.

Defendant foreign corporation, sought to have set aside service of process upon it, effected by service of the summons and complaint upon its president while in the state at plaintiff's place of business discussing the matters in dispute giving rise to the action. The contract sued upon was made in New

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York and only the affair in question was offered as tending to establish the doing of business within New Jersey.

The Supreme Court of New Jersey regarded the grounds advanced for moving to quash the service as well taken. These were that defendant foreign corporation was not amenable to the jurisdiction, and that, even though it was otherwise subject to the jurisdiction of the court, the corporate officer on whom service was made was enticed into the state for the purpose by trick or device, and, therefore, the court ruled the service to be ineffective. The service was accordingly set aside and the complaint dismissed, with costs.

*Yedwab et al. v. M. A. Richards Corporation,** 60 A. 2d 310. Robert J. Bunevich of Passaic, for the rule. A. Leon Kohlreiter (Archibald Kreiger, of counsel), of Paterson, opposed.

* The full text of this opinion is printed in the **State Tax Reporter, New Jersey,** page 511.

NEW YORK

Suit in New York Federal court by a citizen of New Jersey, against an unlicensed Rhode Island company which was assumed to be doing business in New York, based on diversity of citizenship, dismissed for lack of venue under Federal law, as company was a citizen and resident of Rhode Island only.

In an action of tort against several defendants in the United States District Court, Southern District of New York, instituted by a citizen of New Jersey, and based upon diversity of citizenship, one of the defendants was a Rhode Island corporation, not authorized to do business in New York, which had not designated an agent in New York upon whom service of process might be made under Section 210 of the General Corporation Law.

This defendant moved to set aside service of summons and complaint upon the ground that it was not registered to do business and was not doing business in New York so as to be amenable to service of process there, and argued that the Southern District of New York was not the proper venue for the action. For the purpose of the motion, the court assumed that the defendant was "doing business" in New York.

The plaintiffs asserted that if the defendant was doing business in New York, then it was an inhabitant of the District under Section 51 of the Judicial Code, which provides in part that "where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

The court, after a discussion of a number of pertinent decisions of the Supreme Court of the United States, concluded that the requirements of the Judicial Code had not been met, the corporate defendant being a citizen and resident of Rhode Island only. The motion was therefore granted and the complaint dismissed as to this defendant for lack of proper venue.

Donahue et al. v. M. A. Henry Co., Inc. et al., 78 F. Supp. 91. Theodore D. Rothenberg of Brooklyn, for plaintiffs. Galli & Locker (William C. Olsen, of counsel) of New York City, for defendant Woonsocket Falls Mills, Inc.

Service of process upheld where effected upon foreign parent company by serving a local subsidiary acting as parent's agent and where service was made upon an officer of the subsidiary who acted as representative of the parent.

One of the defendants, an English corporation, with its principal office in London, England, moved to dismiss the action against it because of improper venue and for lack of jurisdiction over it on the ground that it neither transacted business in the State of New York nor was present there.

The motion, so far as it challenged the venue as to this defendant was regarded by the United States District Court, Southern District of New York, as without merit, "for," observed the court, "it is well settled that the general venue statute (28 U. S. C. A., Sec. 112) is inapplicable, and that an action may be maintained against a foreign corporation in any district in which valid service can be made." Service of process had been made upon a person who was managing director of the moving defendant and the vice-president and secretary of a New York subsidiary, which was also a defendant. The court noted that the pleadings indicated that the same persons were the principal officers of both corporations; that advertising matter of the English corporation listed New York as a place where it carried on its business; that negotiations of contracts for the English company were carried on by the New York subsidiary, and that royalties payable by the English corporation were frequently paid by the New York subsidiary.

From these facts, and from an assignment agreement between the two companies, under which the New York subsidiary was to exploit certain property of the English parent, the court felt that the New York subsidiary was acting as the mere agent for the English company, and was merely an instrumentality or adjunct of it. The person served was regarded as being stationed in New York as the representative of the English corporation and his activities viewed as sufficient to support the jurisdiction as against the English corporation. The motion to dismiss was, therefore, denied.

*Bator et al. v. Boosey & Hawkes, Ltd., et al.,** United States District Court, Southern District of New York, July 13, 1948. Commerce Clearing House Court Decisions Requisition No. 395121.

* The full text of this opinion is printed in the **New York Corporation Law Reporter,** page 9238.

OHIO

Service effected upon general agent in charge of local office of railroad corporation upheld, where local activities were systematic and continuous and involved more than mere solicitation of business.

Service of process was made upon defendant foreign railroad corporation by serving its general agent. This the defendant moved to have set aside. It had no rail lines in Ohio, but it had a Cleveland office for the declared purpose of soliciting both freight and passenger business, with the general agent

in charge and three freight solicitors, a stenographer and two clerical employees. None of these were authorized to make contracts, issue bills of lading, settle or negotiate for the settlement of claims, collect accounts or sell tickets. Defendant had no bank account in Ohio and all bills and salaries were paid by the main office located in Omaha, Nebraska.

The United States District Court, Northern District of Ohio, Eastern Division, overruled the motion to dismiss, laying emphasis upon the fact that the soliciting of business was systematic, continuous and quite extensive and that, in addition to the soliciting business, the local office rendered divers services to the defendant's shippers, for example, tracing shipments and investigating damage to special loading equipment on its cars which came into Ohio. Claim adjusters of the company also came to Cleveland and used the local office as their headquarters. The court regarded the conclusion as inescapable that the employees of the Cleveland office performed other duties than merely soliciting passenger and freight traffic. It concluded that the defendant was present so as to be amenable to process to enforce a personal liability in the state.

Willett v. Union Pacific Railroad Co.,* United States District Court, Northern District of Ohio, Eastern Division, February 4, 1948. Payer, Bleiweis, Crow & Molleson of Cleveland, for plaintiff. James C. Davis and Squire, Sanders & Dempsey of Cleveland, for defendant. Commerce Clearing House Court Decisions Requisition No. 389192.

*The full text of this opinion is printed in the **State Tax Reporter**, Ohio, page 313.

PENNSYLVANIA

Unlicensed airline corporation, with office and employees in eastern Pennsylvania, handling traffic there, held subject to service in Federal court suit in Western District of the state.

Defendant Delaware company moved to dismiss service of process upon it. It maintained an office in a Philadelphia hotel, in charge of a traffic and sales manager, where there were also a secretary and five other employees soliciting the transportation of freight and selling tickets. There were also thirty-eight employees at the Philadelphia Southwest Airport, who were engaged in various ways in the operations of the company. It took on and discharged passengers at the airport and was responsible for twenty flights daily. The company's name was also listed in the Philadelphia directory.

Under these circumstances, the United States District Court for the Western District of Pennsylvania concluded that the defendant company was doing business in Pennsylvania and ordered that the motion to dismiss the suit be denied, observing that if the defendant "is doing business in this state, and service can be made upon it, its failure to register is not a defense."

Barr v. Eastern Air Lines,* United States District Court for the Western District of Pennsylvania, April 15, 1948. Commerce Clearing House Court Decisions Requisition No. 390477.

*The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,274.

taxation

CONNECTICUT

Highest state court renders declaratory judgment, in compliance with mandate of Supreme Court of the United States, in suit involving application of state franchise tax to carrier engaged exclusively in interstate commerce within state.

In *Spector Motor Service, Inc. v. Walsh,* decided by the Superior Court, Hartford County, August 13, 1947, (The Corporation Journal, October, 1947, page 14), the Connecticut franchise tax based on net income, as applied to the plaintiff as a carrier engaged exclusively in interstate commerce, was held unconstitutional and void because in violation of the interstate commerce clause of the Federal Constitution and that the tax, as levied against the plaintiff was invalid and could not be collected, the tax otherwise being ruled applicable to the plaintiff and not invalid under the State Constitution.

Upon appeal, the State's highest court, the Supreme Court of Errors, has, in an exhaustive review, directed the deletion of that part of the trial court's judgment concluding that the act imposing the tax was violative of the Federal Constitution, the higher court regarding that question as pending before the Federal courts, for decision in collateral litigation between the same parties. The result of this declaratory judgment appears to be a sustaining of the levy of the tax, so far as the State Constitution and legislation are concerned.

This opinion was secured in compliance with a mandate of the Supreme Court of the United States of December 4, 1944, (The Corporation Journal, January, 1945, page 268), which directed that such an interpretation be secured in an appeal then before the Supreme Court in Federal litigation, involving the same parties and the same subject matter. This litigation was at that time remanded to the Federal District Court where it originated, pending this interpretation. Presumably, there will now be further proceedings in that District Court, leading, eventually, to a review of the issues by the Supreme Court of the United States.

*Spector Motor Service, Inc. v. Walsh,** Supreme Court of Errors, August 25, 1948. Frank J. DiSesa, Assistant Attorney General, with whom, on the brief, was William L. Hadden, Attorney General, for appellant. Cyril Coleman, of Hartford, for appellee. Commerce Clearing House Court Decisions Requisition No. 396643; 61 A. 2d 89.

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* The full text of this opinion is printed in the **State Tax Reporter,** Connecticut, page 289-25.

PENNSYLVANIA

Bonus charge, measured by value of property actually employed in state, upheld, where there was included values of imported goods, still in unbroken packages, stored at Government bonded warehouses and at importing company's plant.

In *Commonwealth of Pennsylvania v. Bayuk Cigars, Inc.*, decided by the Court of Common Pleas, Dauphin County, February 10, 1947, (The Corporation Journal, June, 1947, page 353), it was held, where a Maryland corporation, engaged in the manufacture of cigars and doing business in Pennsylvania, imported goods which were still in original unbroken packages, stored in Government bonded warehouses and at the company's plant, that the goods were in foreign commerce and that the values thereof were not to be included as capital employed or to be employed wholly within the state in determining the amount due as an additional bonus charge.

Upon appeal, this judgment has been reversed by the Supreme Court of Pennsylvania. That court emphasized that the bonus charge was not a tax, but a consideration for the grant of a privilege or franchise and was "neither an impost nor a burden on the tobacco or on any other physical property as such," the privilege being measured by the amount of property which is actually employed in the state. The court concluded that the imported goods were properly included in the measurement of the bonus and that no constitutional provision was contravened when this was done.

Commonwealth v. Bayuk Cigars, Inc.,* 58 A. 2d 445. David Fuss, Deputy Atty. General, and T. McKeen Chidsey, Atty. General, for appellant. John R. Scholl and James J. Dougherty of School & Dougherty, and Jerome J. Rothschild of Fox, Rothschild, O'Brien & Frankel, all of Philadelphia, for appellee. *(Petition for writ of certiorari filed in the Supreme Court of the United States, August 21, 1948; Docket No. 236.)*

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,262.

Inactive Pennsylvania company, which had leased its entire assets, ruled subject to the capital stock tax.

In *Commonwealth of Pennsylvania v. Mack Bros. Motor Car Company*, decided May 5, 1947, by the Court of Common Pleas, Dauphin County, (The Corporation Journal, November, 1947, page 35), a Pennsylvania company, which leased its entire assets to a foreign company and which had no net income, was held subject to the Pennsylvania capital stock tax, although not engaged in any of the corporate purposes for which it was chartered. Upon appeal, this judgment has been affirmed by the Pennsylvania Supreme Court.

Commonwealth of Pennsylvania v. Mack Bros. Motor Car Company,* Pennsylvania Supreme Court, July 6, 1948. Ralph E. Evans of McNees, Wallace & Nurick of Harrisburg, for appellant. Carl F. Chronister, Deputy Attorney General, and T. McKeen Chidsey, Attorney General, for appellee. CCH Court Decisions Requisition No. 394724.

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,310.

appealed to the supreme court

*The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.**

ILLINOIS

Docket No. 159. *Clover Leaf Freight Lines, Inc. et al. v. Pacific Coast Wholesalers Association,* 166 F. 2d 627. (The Corporation Journal, May, 1948, page 148.) Service of process—judgment by default where made upon defendant foreign company by serving president of Illinois corporation acting as agent of the foreign company. **Petition for certiorari filed, July 16, 1948. Certiorari denied, October 11, 1948.**

Docket No. 161. *Independent Pneumatic Tool Company v. Chicago Pneumatic Tool Company,* 74 F. Supp. 502. Affirmed, 167 F. 2d 1002. (The Corporation Journal, January, 1948, page 67.) Venue jurisdiction—whether waived by foreign corporation upon registering in state so as to effect consent on suits in federal, as well as state courts. **Petition for certiorari filed, July 17, 1948. Certiorari denied, October 11, 1948.**

NEW YORK

Docket No. 156. *Donovan v. Queensboro Corp. et al.,* 75 F. Supp. 131. (The Corporation Journal, June, 1948, page 165.) Appeal to U. S. C. C. A., 2d Circuit, dismissed without opinion, March 23, 1948; rehearing denied, April 16, 1948. New York General Corporation Law, Section 61-b—giving of security by plaintiff for defendant's reasonable expenses in derivative suit in Federal court. **Petition for writ of certiorari filed, July 15, 1948. Certiorari denied, October 11, 1948.**

PENNSYLVANIA

Docket No. 236. *Commonwealth of Pennsylvania v. Bayuk Cigars, Inc.,* 58 A. 2d 445. (The Corporation Journal, November, 1948, page 216.) Bonus—inclusion of values of imported goods in unbroken packages, stored in Government bonded warehouses and at importing company's plant. **Petition for certiorari filed, August 21, 1948. Certiorari denied, October 18, 1948.**

* Data compiled from **CCH U. S. Supreme Court Bulletin, 1948-1949.**

regulations and rulings

ALABAMA

A section of the License Schedule of the City of Dothan empowering the governing body of the city to revoke a license should the licensee be found guilty of operating a licensed business, trade, or profession in an unfair, unjust or illegal manner is a valid authorization under the police power and may be exercised by the Board of Commissioners in the furtherance thereof. (Attorney General's Opinion to City Clerk, Dothan, State Tax Reporter, Alabama, ¶ 35-013.) The shares of stock of a domestic corporation engaged in manufacturing aluminum products are not exempt from the tax levied thereon under Sec. 25, Title 51, Code of Alabama, 1940, by the fact that the plant and the personal property used in or connected with the corporation are exempt from taxation by the provisions of Sec. 10, Title 51, Code of Alabama 1940; nor does such exemption exclude the value of such property from the measure of the tax on the shares of stock. (Attorney General's Opinion to Tax Assessor, Morgan County, ¶ 25-003.)

CONNECTICUT

Income attributable to the recovery during the taxable year of a bad debt deducted in any prior year shall be included in gross income for the year in which the recovery is made, whether or not such prior deduction resulted in a tax benefit for the federal corporation net income tax or for the Connecticut Corporation Business Tax in the year taken. An exception is made in connection with debts charged to reserve in accordance with Federal income tax provisions. (Regulation of the State Tax Commissioner, State Tax Reporter, Connecticut, ¶ 10-402.)

DISTRICT OF COLUMBIA

The Commissioners of the District have issued amendments to the Income and Franchise Tax Regulations to reflect the 1948 amendment to the law and to make technical changes. The most important change affected the regulation providing for allocation of income from sales of tangible personal property, which was completely rewritten. (State Tax Reporter, District of Columbia, ¶ 11-506.)

FLORIDA

A foreign corporation qualified to do business in Florida which has a place of business in Florida that (1) is maintained as an order filling warehouse, without authority to extend credit or accept orders for merchandise to be sold on credit, (2) keeps no records of accounts, makes no collections of accounts and has no control over the proceeds of any accounts collected, (3) is not operated independent of the home office, (4) sends salesmen out who take orders for merchandise, such orders being sent to the home office in another state for acceptance or rejection and the merchandise being shipped from a Florida warehouse, is not subject to intangible taxation on accounts receivable owned and kept at the home office for merchandise purchased by Florida residents from the foreign corporation. Such

accounts have not acquired a business situs in Florida which would make them taxable. (Opinion of the Attorney General to the State Comptroller, State Tax Reporter, Florida, ¶ 25-701.)

KENTUCKY

The Attorney General of Kentucky has ruled that a California corporation which manufactures machinery and wishes to store machinery in a warehouse in Kentucky for delivery in Kentucky and elsewhere on the order of the home office after it had approved orders taken by its salesmen in and out of Kentucky, but which would have no selling agent in Kentucky, would be doing business in the state and sales made under such arrangements would not constitute sales in interstate commerce. A corporation doing business on such basis is required to comply with the requirements of the Kentucky foreign corporation laws. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ .012.)

LOUISIANA

The sale of supplies to school authorities for the purpose of furnishing free lunches to needy school children are subject to the sales tax imposed by Act 57 of 1944. The State appropriates funds to assist in providing free lunches and the mere fact that the federal government and local authorities contribute to the fund does not affect the situation. (Opinion of the Attorney General to State Superintendent of the Department of Education, State Tax Reporter, Louisiana, ¶ 60-124.186.) Wholesale houses which sell to lunch rooms owned by the State should collect the sales tax on such sales. Since such sales are made to a consumer for purposes other than resale, the tax must be collected. (Opinion of the Attorney General, State Tax Reporter, Louisiana, ¶ 60-124.187.)

MINNESOTA

A company licensed to operate public warehouses to store goods, wares and merchandise must also be licensed to operate public local grain warehouses when it operates grain elevators under certain lease arrangements. (Opinion of the Attorney General, State Tax Reporter, Minnesota, ¶ 32-555.)

NORTH CAROLINA

Bank deposits of a foreign company, arising out of business done within the state, are subject to the intangibles tax, even though subject to withdrawal only by non-resident officers of the company. (Opinion of the Attorney General to the Commissioner of Revenue, State Tax Reporter, North Carolina, ¶ 29-005.)

OREGON

An initiative measure which is to be presented to the people at the November general election seeks to amend the income tax law by raising the credit for single persons from $500 to $750 and the credit for the head of a family or a married couple from $1,000 to $1,500.00.

TEXAS

Notes, bonds and debentures originally maturing one year or more from the date of issue, but since matured and past due on the books of a corporation, are part of its taxable capital for franchise tax purposes. Certificates of deposit issued by a bank to certain classes of depositors are considered to be written evidences of time deposits only and not of borrowed capital. These need not be included as "written evidences of indebtedness," as that term is used in Art. 7084, R. C. S. (Opinions of the Attorney General, State Tax Reporter, Texas, ¶ 5-301.)

some important matters

for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alaska — Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

Delaware — Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia — Annual Report due between January 1 and January 20. —Domestic Corporations.

Application for license in connection with District Franchise (Income) Tax due on or before January 1.—Domestic and Foreign Corporations.

Georgia — Annual License Tax Report and Tax due on or before January 1. —Domestic and Foreign Corporations.

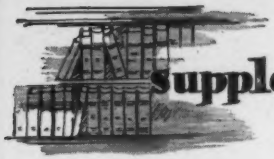
Missouri — Annual Franchise Tax, due on or before December 31.—Domestic and Foreign Corporations.

New York — Second installment of Franchise (Income) Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate companies.

United States — Fourth installment of Income Tax imposed for the calendar year 1947 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

Proposed Additional Missouri Tax

Senate Joint Resolution 3 of the 1947-1948 Session proposing to add Sec. 49 to Article III of the Missouri Constitution, provides for the payment of a soldiers' bonus and for the imposition of an additional 1% sales tax, to be effective January 1, 1949 and thereafter until a fund of $135,000,000 is raised. This amendment will be submitted to the voters at the November election.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

More Sales with Spot Stocks. Advantages found by many manufacturers in carrying spot stocks at strategic shipping points—and preliminary statutory measures necessary to protect corporate status.

What Does a Transfer Agent Do? This illustrated pamphlet gives the highspots of a transfer agent's services in 3 minutes reading time, with explanatory text if you want to read further. Of value to small as well as large corporations.

What Constitutes Doing Business. (Revised to March 1, 1948.) A 187-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Some Contracts Have False Teeth. Interesting case-histories showing advisability of contractor getting lawyer's advice before undertaking construction work outside home state, even for federal government.

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The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.